

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

RECEIVED

MAR 06 2003

DIV. OF OIL, GAS & MINING

3/19/03
m/023/007

IN RE:

NORTH LILY MINING COMPANY, INC.,
a Utah corporation,
EIN: 87-0159350

Debtor.

Bankruptcy No. 01-23068-EEB
Chapter 11

IN RE:

XERES TINTIC, LLC,

EIN: 84-1528808

Debtor.

Bankruptcy No. 01-23069-DEC
Chapter 11

Jointly Administered Under
Case No. 01-23069

NOTICE PURSUANT TO LOCAL BANKRUPTCY RULE 202 OF
MOTION TO APPROVE SETTLEMENT AGREEMENT WITH EPA,
STIPULATION WITH OLD WEST, AND STIPULATION WITH DOZORTSEV

TO ALL PARTIES IN INTEREST:

NOTICE IS HEREBY GIVEN that the movant named below has applied to this Court or is intending to take action as follows:

The Debtor has made Application to the Court for an order approving a Settlement Agreement with the United States Environmental Protection Agency ("EPA"). The Settlement Agreement allows the Debtor to satisfy a \$2,274,780 general unsecured claim held by the EPA by providing the EPA with certain well water and borrow material. The well water and borrow material will be used by the EPA for reclamation related to old mining sites in Utah. The well water and borrow material are not otherwise marketable. The EPA is separately giving notice in the Federal Register pursuant to its public comment policies under the Comprehensive Environmental Response, Compensation and Liability Act.

The Debtor has also filed Motion to approve a stipulation with Old West, a secured creditor in the case. The stipulation allows Old West to accrue interest at the contract rate of 13% and the amount of principal and interest due is agreed to as \$96,315.88. The Debtor reserves the right to review and object to the fees and costs of Old West. Old West agrees to withdraw its objection to the Plan and will amend its ballot to accept the Plan.

The Debtor has also entered into a settlement agreement with Nicky Dozortsev. The agreement provides that the Debtor pay Dosortsev \$10,000 at or soon after Plan confirmation, and provides Dozortsev with a \$20,000 general unsecured claim in the Plan, which shall be paid in stock. Dozortsev shall retain approximately 785,000 shares of stock which shall be subject to the reverse split under the Plan. The Debtor agrees to waive claims related to avoidance actions against Dozortsev. Dozortsev agrees to withdraw his objection to Plan confirmation.

A copy of the pleading is available for inspection in the Bankruptcy Court Clerk's Office, 721 -19th Street, First Floor, Denver, Colorado 80202, or upon request from the undersigned attorney.

Pursuant to Rule 202 of the Local Rules of Bankruptcy Procedure, if you desire to oppose this action you must file a written objection and request for a hearing with the Court on or before **MARCH 24, 2003**, and serve a copy thereof on the undersigned attorney. Objections and requests for hearing shall clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered by the Court.

In the absence of a timely and substantiated objection and request for hearing by an interested party, the Court may approve or grant the aforementioned application without any further notice to creditors or other interested parties.

0003

Dated: February 27, 2003.

Respectfully submitted,

By: 

Lee M. Kutner, No. 10966

Jenny M.F. Fujii, No. 30091

KUTNER MILLER KEARNS, P.C.
303 E. 17th Avenue, Suite 500
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E-Mail: lmk@kutnerlaw.com

MAR 06 2003

DIV. OF OIL, GAS & MINING

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:)	
)	
NORTH LILY MINING COMPANY, INC.,	)	Bankruptcy No. 01-23068-EEB
a Utah corporation,	)	Chapter 11
EIN: 87-0159350)	
)	
<u>Debtor.</u>)	
)	
IN RE:	)	Bankruptcy No. 01-23069-DEC
	)	Chapter 11
XERES TINTIC, LLC,)	
	)	Jointly Administered Under
EIN: 84-1528808	)	Case No. 01-23069
)	
Debtor.)	

MOTION TO APPROVE SETTLEMENT AGREEMENT WITH EPA

North Lily Mining Company, Inc. ("North Lily"), by and through its attorneys, Kutner Miller Kearns, P.C., moves to Approve a Settlement Agreement with the United States Environmental Protection Agency regarding its claim, and as grounds therefor states as follows:

1. The Debtor filed its Voluntary Petitions under Chapter 11 of the Bankruptcy Code on September 6, 2001.
2. The Court approved the Debtor's Disclosure Statement and the hearing on confirmation of its Plan of Reorganization ("Plan") is set for February 28, 2003.
3. On January 3, 2003, the Debtor and the United States Environmental Protection Agency ("EPA") filed a Joint Stipulation regarding the EPA claim. The Joint Stipulation provided that the EPA file a proof of claim in an unspecified amount pending settlement discussions between the Debtor and EPA.
4. The Debtor and EPA have resolved the EPA claim as set forth in the Settlement Agreement attached hereto as Exhibit A. The Settlement Agreement allows the Debtor to satisfy the EPA claim with materials, including well water and "borrow material." The Debtor's rights to certain well water in Utah are limited to reclamation purposes. The Debtor has agreed to provide up to 10,548,792 cubic feet per

year of well water through December 31, 2006. The borrow material is defined as topsoil, select fill and base material located on the Debtor's land within a five mile radius of Eureka, Utah. The EPA intends to use the well water and borrow material for reclamation related to old mining sites in Utah.

5. The Settlement Agreement is in the best interests of the creditors and the estate. The Settlement Agreement allows the Debtor to satisfy a \$2,274,780 claim with well water and borrow material. The well water and borrow material are beneficial to the EPA due to its need for materials related to reclamation in the area. The well water and borrow material are not otherwise marketable for sale.

6. In connection with the Settlement Agreement, the EPA is filing a Notice of Lodging of Proposed Settlement Agreement Pending Solicitation of Public Comment ("Notice") with this Motion. The Notice is attached hereto as Exhibit B. The Notice is required under the Comprehensive Environmental Response, Compensation, and Liability Act. Within approximately forty five days after the notice is published in the Federal Register, the EPA will notify the Court of any significant comments made. At such time, if comments indicate that the settlement is not inappropriate, the EPA will then request the Court's approval of the Settlement Agreement. In addition to the EPA's solicitation for public comment, the Debtor is filing a 202 notice.

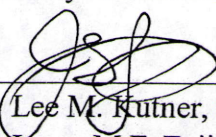
7. Based on the foregoing, the Debtor requests that this Court approve the Settlement Agreement.

WHEREFORE, the Debtor prays that the Court make and enter an Order approving the Settlement Agreement with the United States Environmental Protection Agency, and for such further and additional relief as to the Court may appear proper.

Dated: February 27, 2003.

Respectfully submitted,

By: _____


Lee M. Kutner, #10966
Jenny M.F. Fujii, #30091

KUTNER MILLER KEARNS, P.C.
303 E. 17th Avenue
Suite 500
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Telephone: (303) 832-2400
Facsimile: (303) 832-1510
email: lmk@kutnerlaw.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

IN RE:)	
	)	Bankruptcy No. 01-23089-EEB
)	
NORTH LILY MINING COMPANY, INC.,)	)	Chapter 11
A Utah Corporation,)	
EIN: 87-0159350)	
Debtor.)	
)	
IN RE:	)	Bankruptcy No. 01-23069-EEB
	)	Chapter 11
)	
XERES TINTIC, LLC,)	
EIN: 84-15288808	)	Jointly Administered Under
Debtor	)	Bankruptcy No. 01-23068-EEB
	)	Chapter 11

SETTLEMENT AGREEMENT

WHEREAS, the North Lily Mining Company ("Debtor") filed with the United States Bankruptcy Court for the District of Colorado a voluntary petition for relief under Title 11 of the United States Code (the "Bankruptcy Code") on September 6, 2001;

WHEREAS, the United States alleges that the Debtor is liable pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607 ("CERCLA"), for reimbursement of response costs incurred and to be incurred for response actions taken by the United States Environmental Protection Agency at or in connection with the release or threatened release of hazardous substances at the Eureka Mill Superfund Site (the "United States' Claim").

EXHIBIT A

WHEREAS, The Debtor alleges such liability as it may have under CERCLA to reimburse the United States Environmental Protection Agency for response costs at the Eureka Mills Site results from corporate mergers in 1976 and not from the actions of Debtors;

WHEREAS, on or about January 6, 2003, the United States filed a proof of claim against the Debtor's estate in an unliquidated amount in connection with the United States' Claim;

WHEREAS, the Parties desire to settle, compromise, and resolve the United States' Claim against the Debtor;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, the Debtor and the United States hereby agree to the terms and provisions of this Settlement Agreement; and

WHEREAS, settlement of the matters governed by this Settlement Agreement is in the public interest and an appropriate means of resolving this matter.

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the Parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

I. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA, or in regulations promulgated under CERCLA, shall have the meaning assigned to

them therein. When terms listed below are used in this Settlement Agreement, the following definitions apply:

- a. **"Bankruptcy Case"** shall mean the bankruptcy case presently pending in the Bankruptcy Court captioned In Re: North Lily Mining Company, Case No. 01-23068(EEB)(Bankr. D. Colo.).
- b. **"Bankruptcy Court"** shall mean the United States Bankruptcy Court for the District of Colorado.
- c. **"CERCLA"** shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.
- d. **"Debtor"** shall mean the North Lily Mining Company, its successors, or assigns.
- e. **"EPA"** shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- f. **"Hazardous Substance Superfund"** shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. **"Paragraph"** shall mean a portion of this Settlement Agreement identified by an arabic numeral or an upper or lower case letter.
- h. **"Parties"** shall mean the parties to this Settlement Agreement: the United States and North Lily Mining Company.

- i. **"Plan"** shall mean Debtor's plan of reorganization as confirmed by the federal Bankruptcy Court for the District of Colorado.
- j. **"Section"** shall mean a portion of this Settlement Agreement identified by a roman numeral.
- k. **"Site"** shall mean the Eureka Mill Superfund Site, located in central Utah, approximately 80 miles southwest of Salt Lake City and encompasses the City of Eureka and adjacent unincorporated areas of Juab County and Utah County. The Site boundaries are generally depicted in Exhibit A affixed hereto.
- l. **"United States"** shall mean the United States of America, including its departments, agencies and instrumentalities.
- m. **"United States' Claim"** shall mean the United States' claim that pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) that the Debtor is jointly and severally liable for the response costs the United States has incurred and will incur in responding to the release or threat of release of hazardous substances at the Site. The United States estimates its claim against Debtor for its portion of Site costs to be \$2,274,780.50.

II. JURISDICTION

- 2. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).

III. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

3. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the United States, the Debtor, and the Debtor's legal successors and assigns, and any trustee, examiner or receiver appointed in the Bankruptcy Case.

IV. ALLOWANCE AND SATISFACTION OF CLAIM

4. On the Effective Date of this Settlement Agreement, the United States shall be deemed to have an allowed general unsecured claim against the Debtor in the amount of \$2,274,780.50 in the Bankruptcy Case.

5. In lieu of any cash payments or distribution of stock, the debtor shall satisfy the United States' Claim in full as described in Paragraphs 6 and 7, *infra*.

6. **North Lily Water Well.** The Debtor shall make all best efforts to secure water to provide to the United States (for the purposes of this Paragraph, "United States" means the United States or designees) for the United States' use in connection with remediation of the Site under the terms and conditions specified in this Paragraph. The Debtor shall be responsible for its costs incurred in connection with these efforts.

a. **Source.** The Debtor shall seek an extension of water rights appropriation Application Number 68-2315 (F55808) from the State Engineer of Utah until December 31, 2006. The Debtor shall ensure that the extension, if permitted, allows Debtor to provide water to the United States for use in connection with remedial activity throughout the Site. The source of

that water is anticipated to be an eight-inch well, 535 feet deep located South 209 feet and West 1282 feet from the N1/4 corner of Section 35, T10S, R3W, SLB&M., in Juab County, Utah ("Water Source").

- b. Water Quantity and Quality. The Debtor shall allow the United States a total water use of up to 10,548,792 cubic feet per year from the Water Source. The United States' right to use the Water Source shall begin when Debtor's right to appropriate and use that water is recognized by the State Engineer of Utah and extend, uninterrupted, until December 31, 2006. Water provided by the Debtor shall be suitable for potable use. The Debtor reserves the right to use any portion of the water allocation not required by the United States for remediation of the Site.
- c. Access. Debtor shall provide to the United States unrestricted access 24 hours per day for 365 days per year to the Water Source for the purpose of obtaining water from the Water Source and for the installation, modification, inspection, use, operation, and maintenance of the Water Source and Improvements identified in Subparagraph 6.d.
- d. Improvements. Debtor shall allow the United States to use and improve ("Improvements") the property in and adjacent to the Water Source as follows:
 - i. Debtor shall allow the placement of a rock surfaced road for vehicular access to and from adjacent streets and highways to the Water Source and shall allow the

placement of a rock surfaced equipment staging area in a location proximate to the Water Source;

- ii. The Debtor shall allow the United States access to and use of any existing storage tank(s) or pipeline(s) on the property upon which the Water Source is located;
- iii. The Debtor shall allow the United States to place water storage tanks on the property proximate to the Water Source;
- iv. The Debtor shall allow the United States to place fuel storage tanks and associated structures on the property proximate to the Water Source;
- v. The Debtor shall allow the United States access to any electric power source(s) on the property proximate to the Water Source and grant the United States permission to improve those source(s), including but not limited to the placement of a portable generator in an area proximate to the Water Source. The United States shall pay all utility fees related to their use of any electric power source(s) on the property;
- vi. The Debtor shall allow the United States to place a temporary waterline from the Water Source to Highway 6 and allow the United States to temporarily cover the waterline using soils adjacent to pipeline; and
- vii. The Debtor shall allow the United States the right to alter the well head and casing as necessary to facilitate extraction from the Water Source.

e. Security. The Debtor shall allow the United States the right to restrict access to and use of the Water Source in a manner consistent with this Decree and shall allow the United States to provide security for the Water Source and Improvements.

f. Termination of Use. Use of the Water Source shall terminate on December 31, 2006. If use under this Paragraph is terminated by the United States before December 31, 2006, the United States will give the Debtor 30 days prior written notice of its intent to terminate the use. Upon termination, the Water Source and adjacent property shall be decommissioned as follows:

- i. Any rock surfaces placed by the United States to facilitate use shall remain in place;
- ii. Any temporary storage tank(s) and fuel tank(s) placed by the United States to facilitate use shall be removed;
- iii. Any alterations to existing waterline(s) or tank(s) made by the United States to facilitate use shall be restored to a pre-use or equivalent condition;
- iv. Any temporary waterline(s) placed by the United States to facilitate use shall be removed;
- v. Any temporary cover placed by the United States to facilitate use shall be re-graded to natural contours and hydro seeded with a native seed mix;

vi. Any modifications to power sources and related power infrastructure made by the United States to facilitate use shall be left in-place;

vii. Any temporary pump(s) or water line(s) placed by the United States to facilitate use shall be removed from the Water Source and the pre-use or equivalent pump shall be installed;

viii. Any alterations to the well head and casing made by the United States to facilitate use shall be removed or modified as appropriate to return the Water Source to its pre-use or equivalent configuration, unless the owner of the Water Source consents to he improvements being left in place; and

ix. Any security structures placed by the United States to facilitate use shall be removed.

g. The Debtor and the United States shall, in good faith, make all efforts to amicably resolve any dispute which may arise in connection with the use and decommissioning of the Water Source.

7. **Borrow Materials.** The Debtor shall provide Borrow Materials to the United States or its designee, for its use in connection with remediation of the Site under the terms and conditions specified in this Paragraph.

a. Source. The Debtor shall provide Borrow Material to the United States from a source or sources within a 5 mile radius of the City of Eureka, Juab County, boundaries

("Borrow Source(s)"). The Borrow Source(s) must be readily available in all weather conditions and shall be located in areas where safe access and egress from Borrow Source(s) onto public roads is readily available.

a. Quantity and Quality of Borrow Material. The Borrow Source(s) must be capable of providing topsoil, select fill, and base material from the same borrow area.

i. Quantity. The Debtor shall provide to the United States up to 250,000 cubic yards of topsoil and up to 250,000 cubic yards of select fill and base material for use as Borrow Material. The Borrow Source(s) identified by the Debtor shall be capable of providing a minimum of 800 cubic yards per day of topsoil and a minimum of 800 cubic yards per day of select fill and base material.

ii. Quality. The Borrow Material provided by the Debtor shall not contain hazardous waste(s) or substance(s) or any other deleterious material as determined by the United States. For fill and base material, the Borrow Material provided by the Debtor shall be no larger than 1-inch minus. The United States shall also have the right to remove from the Borrow Source(s) any stone, boulders, or cobble material as needed for use in connection with its remediation of the Site. The United States in its sole discretion may reject any Borrow Materials tendered by Debtor.

b. Access. The Debtor shall allow the United States to begin extracting Borrow Material from the Borrow Source(s) upon the effective date of this Decree and the United States right to

extract Borrow Material shall terminate on December 31, 2006. During this period, the Debtor shall allow the United States access to the Borrow Sources 24-hours per day, 365 days per year. Unrestricted access shall be provided for entire duration of remediation. The Debtor shall provide the United States access to the Borrow Sources for all purposes related to the extraction of Borrow Material including but not limited to:

- i. The preparation, extraction, transport, operation, management, inspection and decommissioning of the Borrow Sources;
- ii. The placement of screening equipment, temporary storage tanks for fuel and water, and long-term storage of equipment and stockpiled material for the duration of the remediation; and
- iii. The installation of Improvements and Conduct of Operations described in Subparagraph 7. d.

d. Improvements and Operations. Debtor shall allow the United States to use and improve the property upon which the Borrow Source(s) is(are) located as follows:

- i. Prior to initiating operations, the Debtor shall allow the United States to sample and test the Borrow Source(s) for the Contaminates of Concern as defined in the Record of Decision. Additionally, the Debtor shall allow the United States to conduct historical and archeological investigations on the Borrow Source area(s) prior to intrusive activities (with the exception of sampling). The United States, in its sole

discretion, may reject any Borrow Materials or any Borrow Source tendered by Debtor if contaminants are detected or if development of the source would have unacceptable adverse historical or archeological impact.

- ii. The Debtor shall allow the United States to install erosion prevention measures which will be maintained throughout the operation and closure of the Borrow Source(s).
- iii. The Debtor shall allow the United States to construct roadways, storage areas, staging areas, and such other facilities on the Borrow Source(s) as are necessary to the extraction, preparation, and transportation of off Borrow Materials.
- iv. The Debtor shall allow the United States access to any available source of water located on the Borrow Source(s) which the Debtor owns or controls and allow the United States the right to use as much of that water as is not required by the Debtor.
- v. The Debtor shall allow the United States access to and use of any electric power facilities on the Borrow Source(s) and grant the United States permission to improve those facilities as needed. The United States shall pay all utility fees related to their use of any electric power source(s) on the property.
- vi. The United States shall conduct operations on the Borrow Source(s) in a safe manner. Also the United States shall make all reasonable efforts to suppress any dust generated by its operations in the Borrow Source(s). Finally, the United States shall

ensure that borrow slopes shall be set-back to adequate distance from public roads and meet State of Utah Department of Transportation requirements.

e. Security. The Debtor shall allow the United States the right to restrict access to and use of the Borrow Source(s) in a manner consistent with this Decree and shall allow the United States to provide security for operations, personnel and equipment at the Borrow Sources.

f. Termination of Use. Use of the Borrow Sources shall terminate on December 31,

2006. Upon termination, the Borrow Sources shall be decommissioned as follows:

- i. The United States shall remove all of its equipment from the Borrow Source(s);
- ii. The United States shall remove all tanks, fences, buildings, waterlines, power lines, or other such structures installed by the United States on the Borrow Source(s) to facilitate the extraction, processing and transportation of Borrow Materials;
- iii. Any roadways or rock surfaces installed by the United States on the Borrow Source(s) to facilitate the extraction, processing and transportation of Borrow Materials shall remain in place;
- iv. The United States shall restore all portions of the Borrow Sources disturbed by the United States' extraction of Borrow Materials as specified in applicable Utah Department of Oil Gas and Mining and Utah Department of Environmental Quality requirements. Upon completion of restoration, the portions of the Borrow Sources

disturbed by the United States extraction of Borrow Materials shall be hydro seeded with native seed mix based on University of Utah recommendations.

g. The Debtor and the United States shall, in good faith, make all efforts to amicably resolve any dispute which may arise in connection with the use and decommissioning of the Borrow Sources.

8. In the event that the in-kind services are not provided, in whole or part, as set forth in Paragraphs 6 and 7 in satisfaction of the United States' Claim, the United States' Claim shall be treated as other allowed general unsecured claims in the Bankruptcy Case, less the proportionate value of the in-kind contributions actually made by Debtor pursuant to Paragraphs 6 and 7, *supra*, and paid in accordance with the Bankruptcy Code. In no event shall the United States' Claim allowed or to be allowed pursuant to this Settlement Agreement be subordinated to any other allowed general unsecured claim(s) pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims. Any payments to be made on the United States' Claim shall be made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 08-CF, and shall be sent to:

Mellon Bank
EPA Region 8
ATTN: Superfund Accounting
P.O. Box 360859M
Pittsburgh, Pennsylvania 15251

9. At the time of any such payment, the Debtor shall send notice that such payment has been made to:

Mike Rudy (8ENF-T)
Enforcement Specialist
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202

V. COVENANT NOT TO SUE BY UNITED STATES

10. Except as specifically provided in Paragraph 11 (Reservation of Rights by United States), the United States covenants not to sue or take administrative action against the Debtor from or for all response actions taken, all response costs incurred or to be incurred now or hereafter occurring arising from or relating to the Site pursuant to CERCLA. This covenant not to sue shall become effective upon approval of Settlement Agreement by the Bankruptcy Court.
11. **Reservation of Rights**. The covenant not to sue set forth in Paragraph 10 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor or other person with respect to all other matters, including but not limited to: (a) liability for failure of the Debtor to meet a requirement of this Settlement Agreement; (b) criminal liability; and (c) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other

applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States or the State pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable federal or state law or regulation, or to excuse the Debtor from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable federal or state law or regulation.

VI. COVENANT NOT TO SUE BY THE DEBTOR

12. The Debtor covenants not to sue and agrees not to assert any claims or causes of action against the United States, EPA, or their contractors or employees with respect to the Site or this Settlement Agreement. This covenant not to sue includes, but is not limited to:

- a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. Any claim arising out of response actions at the Site for which the Response Costs were incurred, or out of the United States' efforts to recover Response Costs; and
- c. Any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

13. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

VII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

14. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement. Each of the Parties expressly reserves any and all rights (including but not limited to any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

15. With regard to all existing or future third-party claims against the Debtor with respect to the Site, including claims for contribution, the Parties agree that the Debtor is entitled to such protection from actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

16. The Debtor agrees that, with respect to any suit or claim for contribution brought for matters related to this Settlement Agreement and brought subsequent to its effective date, it will notify the United States in writing no later than 30 days prior to the initiation of such suit or claim.

VIII. RETENTION OF RECORDS

17. Until ten (10) years after the effective date of this Settlement Agreement, the Debtor shall preserve and retain all records and documents now in their possession or control, or which come into

their possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site.

IX. NOTICES AND SUBMISSIONS

18. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-07993)
P.O. Box 7611
Washington, D.C. 20044-7611

Suzanne Bohan, Esq. (8ENF-L)
Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8
999 Eighteenth Street; Suite 300
Denver, Colorado 80202

As to the Debtor:

Mr. S. E. Flechner, President
North Lily Mining Company
1800 Glenarm Place
Denver, Colorado 80202

XI. RETENTION OF JURISDICTION

19. Except upon withdrawal of the Bankruptcy Court's reference, the Bankruptcy Court or the U.S. District Court for the District of Colorado shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Settlement Agreement.

XI. INTEGRATION

20. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement between the Parties other than those expressly contained in this Settlement Agreement.

XII. JUDICIAL APPROVAL AND OPPORTUNITY FOR PUBLIC COMMENT

21. The settlement reflected in this Settlement Agreement shall be subject to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. Prior to any hearing on any proposed plan of reorganization, the Debtor shall move for Bankruptcy Court approval of this Settlement Agreement and shall present such evidence and legal argument as is reasonably necessary to obtain such approval.

22. This Settlement Agreement shall also be subject to a public comment period of not less than 30 days. The United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

XIII. EFFECTIVE DATE

23. The Effective Date of this Settlement Agreement shall be the latter of (i) the date upon which it is approved by the Bankruptcy Court or (ii) the date upon which the United States provided to the Debtor written notice that the public comment period pursuant to Paragraph 21 has closed and that comments received, if any, do not require modification of or the United States' withdrawal from this Settlement Agreement.

XIV. SIGNATORIES/SERVICE

24. The signatories for the Parties each certify that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document.

THE UNDERSIGNED PARTY ENTERS INTO THIS SETTLEMENT AGREEMENT
FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date 2/20/03

for Sharon L Kercher
for CAROL RUSHIN
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice
U.S. Environmental Protection Agency, Region 8

Date 2/20/03


Michael T. Risner
MICHAEL T. RISNER
Director
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice
U.S. Environmental Protection Agency, Region 8

Date 2/20/03

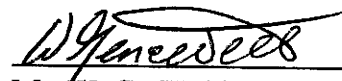
Suzanne Bohan
SUZANNE BOHAN
Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice
U.S. Environmental Protection Agency, Region 8

**THE UNDERSIGNED PARTY ENTERS INTO THIS SETTLEMENT AGREEMENT
FOR NORTH LILY MINING COMPANY:**

Date 17 Feb 03


Mr. S. E. Flechner, President
North Lily Mining Company
1800 Glenarm Place
Denver, Colorado 80202

Date 17 Feb 03


Mr. W. G. Webb, Vice President
North Lily Mining Company
1800 Glenarm Place
Denver, Colorado 80202

THE UNDERSIGNED PARTY ENTERS INTO THIS SETTLEMENT AGREEMENT
FOR THE UNITED STATES OF AMERICA DEPARTMENT OF JUSTICE:

Date: 2/24/03

John N. Moscato for & authorized by

W. BENJAMIN FISHEROW

Deputy Section Chief

Environmental Enforcement Section

Environment and Natural Resources Division

U.S. Department of Justice

P.O. Box 7611

Ben Franklin Station

Washington, D.C. 20530

Date: 2/24/03

John N. Moscato

JOHN N. MOSCATO

Trial Attorney

Environmental Enforcement Section

U.S. Department of Justice

999 Eighteenth Street, Suite 945NT

Denver, CO 80202

(303) 312-7346

IN RE:

Chapter 11

Chapter 11

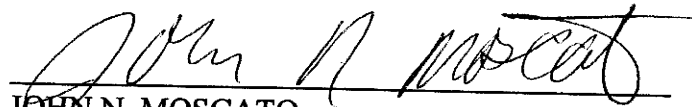
**Jointly Administered Under
Bankruptcy No. 01-23068-EEB
Chapter 11**

EXHIBIT B

50.7, the United States is required to publish notice of this proposed Settlement Agreement in the Federal Register, and solicit public comment on the proposed settlement, prior to its approval by this Court. Accordingly, the Department of Justice will publish in the Federal Register a notice that the proposed Settlement Agreement has been lodged with the Court. The notice will solicit public comment for a period of 30 days. The United States requests that the Court not approve the proposed Settlement Agreement at this time. Instead, the proposed Settlement Agreement should remain lodged with the Court while the United States provides an opportunity for public comment.

Following conclusion of the public comment period, the United States will evaluate the comments received, if any, and provide a response to the Court, including a request to approve the proposed Settlement Agreement, if the comments do not disclose facts or considerations which in the United States's judgement indicate that the proposed settlement is inappropriate, improper or inadequate.

Dated: February 24, 2003.



JOHN N. MOSCATO
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945 N
Denver, CO 80202
(303)312-7346

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:

NORTH LILY MINING COMPANY, INC.,
a Utah corporation,
EIN: 87-0159350

Debtor.

)
)
) Bankruptcy No. 01-23068-EEB
) Chapter 11
)
)
)
)
)
)

IN RE:

XERES TINTIC, LLC,
EIN: 84-1528808

Debtor.

)
) Bankruptcy No. 01-23069-DEC
) Chapter 11
)
) Jointly Administered Under
) Case No. 01-23069
)
)
)
)
)

ORDER APPROVING SETTLEMENT AGREEMENT WITH EPA

THIS MATTER having come before the Court on the Debtor's Motion To Approve Settlement Agreement with the United States Environmental Agency ("Motion"), the Court finding that proper notice was provided, and no timely objections received, the Court having considered the Motion and cause having been shown by the Debtor, does

ORDER

That the Settlement Agreement attached to the Motion is hereby approved.

DONE and entered this ____ day of March, 2003 at Denver, Colorado.

Judge Elizabeth E. Brown
United States Bankruptcy Judge